IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No. 2746 of 2004

Between:

Smt.Shaik Asmath, W/o.Mahaboob Subhani,
F.P.Shop Dealer, Sattenapalli, Guntur Dist.

..... PETITIONER

AND

1 The District Collector, Guntur District, Guntur.
2 The Joint Collector, Guntur District, Guntur.
3 The Revenue Divisional officer, Guntur District, Guntur.
4 The Mandal Revenue officer, Sattenapalli, Guntur Dist.
5 Smt.P.V.T.S.B.Padmavathi, W/o.Adinarayana,
Vadlavalli Village, Sattenapalli Town, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the proceedings of the 2nd respondent vide ACD Dis.No.38/2002-S7 dated 9-10-2002 and as confirmed by the 1st respondent in Revision case No.25/2002-S7 dated 9-1-2004 wherein setting aside the orders of the 3rd respondent; as illegal, arbitrary and with non application of mind and to set aside the same and consequentially declare that the petitioner's appointment as Fair price shop dealer is perfectly valid and same is not contrary to the guidelines given by the government.

Counsel for the Petitioner : MR.M.PRABHAKARA RAO

Counsel for Respondent Nos.1 to 4 : GP FOR CIVIL SUPPLIES

Counsel for Respondent No.5 : Mr. N.Sreerama Murthy, Advocate

The Court made the following :

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ORDER :

When the permanent vacancy of Fair Price Shop Dealership of Circle No.292, Sattenapalli Mandal arose, the third respondent issued a notification on 9-3-2002. The petitioner, fifth respondent and another lady filed applications for dealership, as Circle No.292 is reserved for women. After conducting due selections, the third respondent opined that the petitioner is eligible for being appointed as Fair Price Shop Dealer. Her appointment was assailed by filing appeal under Clause 17 of the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 (hereafter called 'the Control Order'). The appellate authority, the second respondent herein, by an order dated 9-10-2002 set aside the proceedings of the Revenue Divisional Officer dated 20-4-2002, *inter alia*, on the ground that the petitioner being a resident of Ward No.21, is not eligible for being appointed as Fair Price Shop Dealer, which is located in Ward No.19. Aggrieved by the same, the petitioner filed a revision under Clause 18 of the Control Order before the first respondent. The first respondent also dismissed the revision assailing which the present writ petition is filed.

Before the appellate authority as well as the revisional authority, it was contended by the fifth respondent that the petitioner being a resident of Ward No.21 ought not to have preferred for being appointed as Fair Price Shop Dealer. This weighed with both the revisional authority as well as the appellate authority having regard to the Guideline Nos.8 and 9 of the Annexure to G.O.Ms.No.198, F, CS & CA (CS.IV) Department, dated 5-2-1996, which read as under.

"**8. RESIDENCE:-**

The candidate shall be a resident of the Gram Panchayat or the Municipal limits of the town, as the case may be, in which the shop is to be located.

9. PREFERENCE & PRIORITIES:-

i. **Preference shall be given to a resident of the revenue village or hamlet in which the shop is to be located or the ward in a Municipality where the shop is to be located;**

ii. Preference shall be given to women candidates belonging to families of freedom fighters, if they apply; and

iii. Preference shall be given to DWCRA groups, Thrift groups functioning under various names like 'Podupu Lakshmi'."

(emphasis supplied)

Learned counsel for the petitioner Sri M.Prabhakar Rao, however, contends that when the Fair Price Shop at Circle No.292 is catering to the needs of Ward Nos.18, 19 and 21, the residents in any of the Wards must be treated as residents of the Ward where the Fair Price Shop is located. I am afraid the submission of the learned counsel cannot be accepted.

I n **M.Chandra Obula Reddy v. District Collector, Kadapa District** this Court adverted to the Government Memo dated 22-3-1993 which was to the similar effect. Having regard to the language in Clause 1.4.2, which is *In Pari Materia* with Clause 9(i) of the Guidelines in G.O.Ms.No.198, dated 5-2-1996, this Court held as under.

> "……What all that should be seen is whether the candidate is having pass in 7th Class and whether he is the resident of the gram panchayat of Choutupalli. These two conditions should be satisfied. Thus, the requirement of residence is also a condition precedent for selection. Other things being equal, the preference shall be given to the residents of the revenue village or hamlet in which the shop is located or the ward in a Municipality where the shop is to be located. However, in the instant case the question of preference does not arise. The petitioner being held as not a resident of the village, but only of the Proddutur town, he does not fulfil the condition required whereas the 4th respondent satisfied both the conditions. His appointment cannot, therefore, be assailed. The writ petition fails and is accordingly dismissed. No costs."

The learned Assistant Government Pleader for Civil Supplies also brought to the notice of this Court, the guidelines issued by the Government pursuant to the promulgation of A.P.State Public Distribution System (Control) Order, 2001. These guidelines were issued vide G.O.Ms.No.53, Consumer Affairs, Food and Civil Supplies (CS-I) Department, dated 6-10-2003. Clause 8 thereof is also *In Pari Materia* with Clause 9(i) of the Guidelines issued in G.O.Ms.No.198,
dated 5-2-1996. Therefore, the submission of the learned counsel for the petitioner

that the guidelines issued in G.O.Ms.No.53, dated 6-10-2003 have no application cannot be accepted especially when the guidelines relevant for the purpose of this case are couched in similar language.

The writ petition is devoid of merits and accordingly dismissed. No costs.

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(V.V.S.RAO, J.)

23-06-2005.

Msr.

To

1 The District Collector,Guntur District, Guntur.
2 The Joint Collector, Guntur District, Guntur.
3 The Revenue Divisional officer, Guntur District, Guntur.
4 The Mandal Revenue officer, Sattenapalli, Guntur Dist.
5 2 CCs to Government Pleader for Civil Supplies,

High Court Buildings, Hyderabad.

6 2 CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

W.P.No.2746 of 2004

23-06-2005

(Msr)